UNITED
NATIONS

A

General Assembly

Distr.
LIMITED

A/AC.243/1994/L.2
30 March 1994

ORIGINAL: ENGLISH

AD HOC INTERGOVERNMENTAL WORKING
GROUP OF EXPERTS ESTABLISHED
PURSUANT TO GENERAL ASSEMBLY
RESOLUTION 48/218
First session
11-15 April 1994
Item 3 of the provisional agenda*

ALLEGED CASES OF FRAUD IN THE UNITED NATIONS: STUDY OF THE POSSIBILITY OF THE ESTABLISHMENT OF A NEW JURISDICTIONAL AND PROCEDURAL MECHANISM OR OF THE EXTENSION OF MANDATES AND IMPROVEMENT OF THE FUNCTIONING OF EXISTING JURISDICTIONAL AND PROCEDURAL MECHANISMS

Internal disciplinary mechanisms

Note by the Secretariat

I. INTRODUCTION

1. Internal disciplinary mechanisms are governed by article X of the Staff Regulations and chapter X of the Staff Rules, which came into effect on 1 January 1990, as explained and amplified by administrative instruction ST/AI/371 of 2 August 1991.

2. All cases are preceded by an initial investigation and fact-finding, as described in paragraphs 3 to 6 below. When the initial investigation and fact-finding reveals the existence of serious misconduct, the Secretary-General has the authority to impose summary dismissal, as explained in paragraphs 7 to 11 below. Other cases where the initial investigation indicates that misconduct has occurred will be referred to a joint disciplinary committee (JDC), as explained in paragraphs 12 to 29 below.

---

* A/AC.243/1994/L.1.

94-15891 (E) 060494

060494

/...

II. INITIAL INVESTIGATION AND FACT-FINDING

3. On the basis of a report submitted to the Director of Personnel (formerly the Assistant Secretary-General for Human Resource Management), setting forth the evidence gathered as a result of the initial investigation and any subsequent fact-finding, the Director decides whether or not the matter should be pursued as a disciplinary case.

4. If the investigation seems to indicate that misconduct has occurred, a staff member may be suspended pending investigation and disciplinary proceedings. Suspension of this nature is not a disciplinary measure and is always imposed without prejudice to the staff member's rights. Under staff rule 110.2, suspension may be imposed when it is in the interests of the Organization to do so, e.g., the conduct in question may pose a danger to other staff members or to the Organization or there is a risk of evidence being destroyed or concealed and redeployment is not feasible (see ST/AI/371, para. 4). Suspension pending investigation under rule 110.2 is normally with pay unless, in exceptional circumstances, the Secretary-General decides that suspension without pay is appropriate. Suspension without pay is usually imposed when the alleged misconduct is serious, as will always be the case in instances of fraud, and the evidence shows that the misconduct is patent. Suspension, with or without pay, should normally not exceed three months, but may be extended in view of the special circumstances of a particular case.

5. In all cases where the investigation seems to indicate that misconduct has occurred, allegations of misconduct are sent to the staff member, setting forth the charges made against him or her, together with a copy of the evidence of the alleged misconduct. The staff member is informed of his or her right to respond within a reasonable period, which is set for each case, and of his or her right to seek assistance of counsel in preparing the response. The deadline may be extended if the staff member makes a request to that effect, with proper justification. The Administrative Tribunal of the United Nations considers that due process requires the staff member to be informed of the charges and be given the right to respond and to be informed of the right to counsel. 1/ Those requirements, which have always been observed, were codified as follows in 1990 by staff rule 110.4 (a):

> "No disciplinary proceedings may be instituted against a staff member unless he or she has been notified or the allegations against him or her, as well as of the right to seek the assistance in his or her defence of another staff member or retired staff member, and has been given a reasonable opportunity to respond to those allegations."

6. Upon receipt of the staff member's response, or if no response is submitted within the specified time, the Office of Human Resources Management analyses all the facts and evidence and assesses the staff member's response to the allegations of misconduct. On the basis of that analysis, the Director of Personnel may:

(a) Decide to close the case when the staff member's conduct does not amount to misconduct or there is insufficient evidence to proceed (if appropriate, a letter of reprimand or caution may be sent to the staff member); or

(b) Refer the case to JDC if the facts and the evidence indicate that misconduct has occurred; or

(c) Recommend to the Secretary-General that the staff member be summarily dismissed if the misconduct is serious and the charges are supported by clear and convincing evidence.

III. SUMMARY DISMISSAL

7. The Secretary-General's authority to impose summary dismissal for serious misconduct is based on staff regulation 10.2, which provides:

> "He may summarily dismiss a member of the staff for serious misconduct."

Summary dismissal is normally imposed when the misconduct is patent, the evidence is clear or overwhelming and the conduct is clearly incompatible with the standards expected of international civil servants. The Tribunal has consistently recognized the Secretary-General's broad discretion to determine what constitutes serious misconduct and summarily to dismiss staff members who engage in it when the evidence supports the charge of serious misconduct. 2/

8. Fraud is serious misconduct. 3/ When fraud is patent and there is strong and clear evidence to support the charges (such as admission by the staff member, cashed cheques, documentary evidence of tampering with financial records, etc.), the conditions are met for the Director of Personnel to recommend to the Secretary-General that the staff member be summarily dismissed, taking into account any comments made by the staff member. The Administration does not have to establish beyond a reasonable doubt the existence of an actual intent to defraud the Organization, 4/ especially when a staff member has falsely certified that he or she meets the conditions for an entitlement. False certification, per se, is serious misconduct. 5/ The amount obtained through fraudulent means is not relevant, 6/ nor is the fact that the resulting loss to the Organization cannot be quantified. 7/

9. A recommendation of summary dismissal by the Director of Personnel is reviewed by the Office of Legal Affairs to make sure that the elements required for a legally valid summary dismissal are present. It is then considered by the Under-Secretary-General for Administration and Management, who has authority to approve the recommendation on behalf of the Secretary-General. Once all the evidence is assembled, the process can be completed very quickly.

10. If summary dismissal is approved, the staff member is informed of the decision and separated immediately. A staff member who is summarily dismissed loses any entitlement to termination indemnity (Staff Regulations, annex III), and to repatriation grant (Staff Regulations, annex IV).

11. Under the revised rules introduced on 1 January 1990, a staff member who has been summarily dismissed has the right under staff rule 110.4 (c) to request a review of the decision by a JDC. So far, no decision has been overturned after such a review. Appeals against the decision to impose summary dismissal can then be submitted to the Administrative Tribunal (staff rule 110.4 (d)).

IV. CASES REFERRED TO A JOINT DISCIPLINARY COMMITTEE

12. In all cases where the misconduct is not deemed to be serious enough to justify summary dismissal or where the facts are unclear, the case will be referred by the Director of Personnel to a JDC, except when the Administration and the staff member agree to waive referral to a JDC, in which case one of the disciplinary measures enumerated in staff rule 110.3 may be imposed immediately.

13. Staff rule 110.3 provides that disciplinary measures may take one or more of the following forms:

(a) Written censure by the Secretary-General;

(b) Loss of one or more steps-in-grade;

(c Deferment, for a specified period, of eligibility for within-grade increment;

(d) Suspension without pay;

(e) Fine;

(f) Demotion;

(g) Separation from service, with or without notice or compensation in lieu thereof, notwithstanding rule 109.3;

(h) Summary dismissal.

The possibility of imposing summary dismissal after a case had been referred to a JDC was introduced in 1990 to take into account those cases where the misconduct was serious but not fully supported by clear evidence at the conclusion of the initial investigation, thus preventing an immediate recommendation for summary dismissal without referral to a JDC. Further fact-finding by a JDC may provide the necessary evidence for a determination that serious misconduct had, in fact, occurred. Summary dismissal imposed after a JDC will trigger the application of annexes III and IV to the Staff Regulations, which will deny to the staff member the benefit of any entitlement to termination indemnity and repatriation grant.

14. JDCs are established pursuant to staff regulation 10.1, which provides:

> "The Secretary-General may establish administrative machinery with staff participation which will be available to advise him in disciplinary cases."

15. Standing JDCs now exist in New York, Geneva and Vienna. For each case, the Presiding Officer of the JDC constitutes a panel, which will be composed of a chairperson (from a list of staff members appointed by the Secretary-General in consultation with the staff), one member from a list of staff members appointed by the Secretary-General, and one member from a list of staff members elected for that purpose by the staff (see staff rule 110.6).

16. When a case presents issues requiring specialized knowledge for a proper understanding of those issues or in any situation where the Secretary-General determines that a standing JDC would not be appropriate, the Secretary-General may establish an ad hoc JDC, which will consider a particular case or a series of cases.

17. The conduct of disciplinary cases at duty stations away from headquarters, and particularly at small duty stations, has always been problematical. It is obviously necessary to do the main fact-finding and investigation in situ and it would also obviously be impractical to transport the staff member, counsel, witnesses and evidence to a headquarters JDC. Until 1990, when revised disciplinary measures were introduced, 9/ cases arising at duty stations away from headquarters were conducted under the provisions of personnel directive PD/1/76, which was intended to provide a fact-finding mechanism, and to ensure the respect of basic due process rights. Under the directive, the head or office or mission designated a local committee or group that examined the evidence, gave a hearing to the staff member and counsel and reported to the head of the office or mission, who was required to evaluate the recommendation before referring it to Headquarters for a decision.

18. The reports under directive PD/1/76 were of uneven quality, largely owing to inexperience in evaluating evidence and to the lack of local staff with legal skills. There were also occasional complaints that the Head of office had exercised undue influence. Nevertheless, by and large, the procedure worked reasonably well, and was held by the Tribunal to be fully protective of the rights of staff members. 9/

19. In the revised disciplinary procedures introduced in 1990, directive PD/1/76 was replaced by an ad hoc JDC mechanism intended to duplicate, as far as possible, the procedures at headquarters JDCs. What was not foreseen at the time the rules were revised was the explosion of peace-keeping missions and the particular problems that would arise in special missions situations. Nor was the complexity of the new mechanism fully appreciated. Unquestionably, the procedures set out in administrative instruction ST/AI/371 are too cumbersome to be useful in many situations, and the Administration is at present considering ways to adapt these, as well as other administrative procedures, to the current realities of the Organization.

20. An ad hoc JDC under administrative instruction ST/AI/371 requires:

(a) A decision by the Director of Personnel to refer a case to a JDC;

(b) A decision by the Under-Secretary-General for Administration and Management on behalf of the Secretary-General to constitute an ad hoc JDC;

(c) Notification of the above decision to the head of office or mission, who must propose, for the composition of the JDC:

(i) The name of a chairperson (after consultation with the staff); and

(ii) Three names of staff members nominated by the head of the office; and

(iii) Three names of staff members nominated by the staff at the duty station;

(d) Since there is no "staff representative body" at special missions, consultations must be held with staff representative bodies elsewhere;

(e) The composition must be approved by the Under-Secretary-General for Administration and Management on behalf of the Secretary-General.

21. Several weeks or more are usually involved in the process of consultation with staff over the chairperson and in the selection of staff nominated by the staff representative bodies. The process is particularly long and arduous in small duty stations where the limited number of staff may render it difficult to find suitable staff members who are not already familiar with particular aspects of the case and/or are not too closely associated with either the Administration or the staff member charged with misconduct. Moreover, given the mobility of staff at special missions, by the time all these consultations have been completed and the membership of a JDC approved, one or more of the members may well have become unavailable and the process has to start again.

22. At certain duty stations (Nairobi and the regional commissions), administrative instruction ST/AI/371 attempts to resolve the difficulty of composing a JDC by providing a Presiding Officer, who will constitute an ad hoc JDC of which he or she, or someone designated by him or her, shall be the chairperson. The Presiding Officer is to select the other two JDC members, one from a list of at least three names submitted by the head of the office, the other from a list of at least three names nominated by the staff representative body at the duty station. Thus, once a Presiding Officer has been designated, it is no longer necessary for Headquarters to be involved in the composition of the ad hoc JDC. To date, however, Presiding Officers have been designated only at Nairobi and Santiago. Despite repeated requests, the other regional commissions have not submitted nominations for Presiding Officers, and, in any case that arises, the JDC members must still be appointed by the Secretary-General.

23. When a case is referred to an ad hoc JDC away from headquarters, the office involved often lacks experience and training in such matters and requests the Office of Human Resources Management to prepare a written presentation of the case, setting forth the charges, the facts, the evidence and the relevant legal principles and highlighting, where appropriate, those areas where additional fact-finding or determination of credibility is necessary.

24. Once a JDC, standing or ad hoc, has been seized of a case, the Director of Personnel in New York, or the designated official at other duty stations, transmits to the staff member the entire dossier submitted to the JDC and advises the staff member of his or her right to be represented by any serving or retired staff member at the duty station where the JDC has been established. In addition, the staff member is informed of the composition of the JDC and advised of his or her right to submit any written observations to the JDC within a specified time, and of his or her right to suggest other persons of whom inquiry might be made and to request that hearings be held and witnesses called.

25. Staff rule 110.7 and paragraphs 17 to 19 of administrative instruction ST/AI/371 contain the rules of procedure to be followed by the JDC.

26. Even though staff rule 110.7 mandates JDCs to act "with maximum dispatch" and to provide advice to the Secretary-General "within four weeks after the case has been submitted to it", the process in fact takes much longer as the rules provide for the staff member to be given the opportunity to submit a written response to the presentation made by the Administration. This, alone, may take four weeks or more when the JDC grants extension(s) to the staff member for submitting a written response.

27. The JDC will consider the case after receiving the Administration's presentation, and the comments of the staff member, if any. The proceedings may be limited to the consideration of written documents, but, in many cases, they involve hearing(s) which the staff member and an official representing the Administration are invited to attend. Witnesses may be heard, which may mean substantial delays when those witnesses are temporarily away on mission or on leave and when their return occurs at a time when one or more members of the JDC are themselves on mission or on leave. The most simple cases usually take several months.

28. After concluding its consideration of the case, the JDC prepares a report containing recommendations as to what disciplinary measures, if any, should be applied. The report is forwarded to the Under-Secretary-General for Administration and Management who, in most cases, will make a decision on behalf of the Secretary-General. In some sensitive cases, the decision will be made by the Secretary-General himself.

29. In accordance with Article 97 of the Charter of the United Nations, which recognizes the Secretary-General as the chief administrative officer of the Organization, JDCs can provide only advice, which is not binding on the Secretary-General. The Administrative Tribunal has repeatedly held that the Secretary-General has broad discretion in disciplinary matters, including determination of what constitutes misconduct as well as what constitutes an appropriate sanction. 10/ Neither a particular finding of fact, nor a recommendation for a given disciplinary measure, is binding on the Secretary-General, especially if it is found that the JDC has not properly applied the legal principles that govern the particular facts of the case.

Notes

1/ See, for instance, judgements Nos. 123 Roy (1968), sect. V, 183 Lindblad (1974), sects. VI and VII, 340 Lebaga (1984), sects. V and VI, 558 Farug (1992), sect. V.

2/ See, for instance, judgements Nos. 479 Caine (1990), sect. III, 484 Omosola (1990), sects. II and III, 494 Rezene (1990), sect. IV, 510 Camara (1991), sect. II and 515 Khan (1991), sect. II.

3/ The consistent jurisprudence of the Administrative Tribunal supports this statement. See, for instance, judgements Nos. 424 Ying (1988), sect. XV, 425 Bruzual (1988), sect. X, and 445 Morales (1989), sect. IV.

4/ See judgements Nos. 445 Morales (1989), sect. IV, 479 Caine (1990), sects. III and XV and 490 Liu (1990), sect. VIII.

5/ Judgements Nos. 424 Ying (1988), sect. XVII, 425 Bruzual (1988), sect. XII, 445 Morales (1989), sect. IV.

6/ Judgement No. 425 Bruzual (1988), sect. XII.

7/ See judgement No. 515 Khan (1991), sect. XI.

8/ Revised disciplinary rules were introduced after repeated calls from the General Assembly. See resolution 44/185 B of 19 December 1989 and resolution 43/224 B of 21 December 1988.

9/ Judgement No. 351 Herrera (1985), sect. II. The Administration is bound to respect the established procedures. Thus, since chapter X now requires all JDCs to be constituted with staff participation, this must be done. There is, however, no general due process requirement that a fact-finding or advisory body in disciplinary matters be constituted with staff participation. See judgements Nos. 515 Khan (1991), sect. XVII, and 583 Djimbaye (1992), sect. VII.

10/ See, for instance, judgements Nos. 210 Reid (1976), sect. IV, 394 Armijo (1987), sect. XII, 429 Bevele (1988), sect. IX, 529 Dey (1991), sect. V, and 558 Farug (1992), sect. XII.

UNITED
NATIONS

A

General Assembly

Distr.
LIMITED

A/AC.243/1994/L.3
4 April 1994

ORIGINAL: ENGLISH

AD HOC INTERGOVERNMENTAL WORKING GROUP
OF EXPERTS ESTABLISHED PURSUANT TO
GENERAL ASSEMBLY RESOLUTION 48/218
First session
11-15 April 1994
Item 3 of the provisional agenda*

ALLEGED CASES OF FRAUD IN THE UNITED NATIONS: STUDY OF THE POSSIBILITY OF THE ESTABLISHMENT OF A NEW JURISDICTIONAL AND PROCEDURAL MECHANISM OR OF THE EXTENSION OF MANDATES AND IMPROVEMENT OF THE FUNCTIONING OF EXISTING JURISDICTIONAL AND PROCEDURAL MECHANISMS

Overview by the Secretariat

I. INTRODUCTION

1. In its resolution 48/218 (III) of 23 December 1993, the General Assembly decided, inter alia, to study the possibility of the establishment of a new jurisdictional and procedural mechanism or of the extension of mandates and improvement of the functioning of existing jurisdictional and procedural mechanisms. To this end, the General Assembly decided that an ad hoc intergovernmental working group of 25 members should be established, which would work with the relevant existing bodies and would submit a report with specific recommendations to the General Assembly no later than at its forty-ninth session. The Secretary-General was requested to provide the Group with the necessary services.

2. In taking these decisions, the General Assembly stressed the necessity of proper management of resources and funds of the United Nations; it also expressed its determination to address alleged cases of fraud in the United Nations in an impartial manner, in accordance with due process of law and full respect for the rights of each individual concerned, especially the right of defence.

---

* A/AC.243/1994/L.3.

3. The purpose of the present paper is to provide an overview of the jurisdictional and procedural mechanisms that exist in the United Nations. As many aspects of these topics have been the subject of extensive reports submitted to the General Assembly over the years, no attempt will be made to duplicate the detailed reviews that can be found elsewhere. Rather, by cross-reference in the body of the report and through a list of basic reference documents annexed thereto, other relevant material will be drawn to the attention of the members of the Working Group.

4. In the General Assembly discussions leading to the adoption of resolution 48/218 (III), it was clear that the term "fraud" was intended to be understood in a very wide sense, whether or not it actually resulted in a financial loss to the Organization or a financial gain to the party committing the fraud. Thus it may entail an attempt by a party to obtain under false pretences an advantage in some other sense than a direct financial benefit.

5. In the General Assembly discussions, it was also understood that the review to be conducted by the Working Group had to take account of the fact that frauds against the United Nations are perpetrated not only by staff members but also by parties external to the Organization. The review of jurisdictional and procedural mechanisms must therefore consider the remedies available to the Organization in cases where those committing fraud are not staff members.

6. The present report addresses the various aspects of the subject in turn under the following headings:

Section II: General legal and institutional framework
Section III: Standards of conduct
Section IV: Prevention and detection of misconduct
Section V: Internal disciplinary mechanisms
Section VI: The Administrative Tribunal
Section VII: Recovery

II. GENERAL LEGAL AND INSTITUTIONAL FRAMEWORK

7. The United Nations is an international, intergovernmental organization established by the Charter. It has the status of an international person vested with legal personality and possesses rights and duties under international law. 1/ Three attributes of the juridical personality of the Organization are relevant in the present context: (a) its capacity to institute legal proceedings; (b) its privileges and immunities; and (c) the capacity to adopt its own rules for its internal affairs. 2/

A. Capacity to institute legal proceedings

8. Article 104 of the Charter provides that the United Nations shall enjoy in the territory of each of its Member States "such legal capacity as may be necessary for the exercise of its functions and the fulfilment of its purposes". The general scope of such juridical personality is set forth in article I, section 1, of the Convention on the Privileges and Immunities of the United

Nations, adopted by the General Assembly on 13 February 1946 (hereinafter referred to as the "General Convention"), 3/ which provides, inter alia, that the United Nations shall have the capacity to contract, to acquire and dispose of immovable and movable property and to institute legal proceedings.

B. Privileges and immunities

9. The capacity given to the United Nations to institute legal proceedings before national courts does not mean, however, that the Organization or its officials are generally subject to the jurisdiction of national courts. Article 105 of the Charter provides that:

> "1. The Organization shall enjoy in the territory of each of its Members such privileges and immunities as are necessary for the fulfilment of its purposes.
>
> "2. Representatives of the Members of the United Nations and officials of the Organization shall similarly enjoy such privileges and immunities as are necessary for the independent exercise of their functions in connection with the Organization."

The privileges and immunities contemplated by the Charter include, pursuant to article II, section 2, of the General Convention, the immunity from any form of legal process except in so far as in any particular case the United Nations has expressly waived its immunity. The inviolability of the premises of the United Nations is recognized in article II, section 3, of the General Convention, which also provides that the property and assets of the United Nations, wherever located and by whomsoever held, shall be immune from search, requisition, confiscation, expropriation and any other form of interference, whether by executive, administrative, judicial or legislative action. Furthermore, article II, section 4, of the General Convention provides that the archives of the United Nations, and in general all documents belonging to it or held by it, shall be inviolable wherever located. Similarly, article V, section 18 (a), of the General Convention provides that United Nations officials are "immune from legal process in respect of words spoken or written and all acts performed by them in their official capacity".

10. The aforementioned privileges and immunities, however, were not conceived as an absolute obstacle to the exercise of national jurisdiction. The United Nations is indeed required, pursuant to article V, section 21 of the General Convention, inter alia, to cooperate at all times with the appropriate authorities of Member States to facilitate the proper administration of justice, secure the observance of police regulations and prevent the occurrence of any abuse in connection with the privileges and immunities enjoyed by its officials.

C. Capacity to adopt rules governing internal affairs

11. Lastly, the Organization was given the capacity to adopt its own regulations and rules governing its internal affairs. Article 101 of the Charter provides that the staff of the United Nations "shall be appointed by the

Secretary-General under regulations established by the General Assembly". The United Nations has made extensive use of this power and established a particular regime for employment and related matters. The Staff Regulations adopted by the General Assembly and the Staff Rules issued by the Secretary-General provide for the terms of employment, rights, duties, obligations, responsibilities and entitlement of United Nations staff. Such regulations and rules further determine the standards of conduct for United Nations officials (see paras. 15-19 below), as well as disciplinary measures that can be taken in case of misconduct or impropriety by its staff (see paras. 34-41 below). An internal appeal process for the settlement of disputes arising from employment with the United Nations was also established, including review by a quasi-judicial body (Joint Appeals Board (JAB) or Joint Disciplinary Committee (JDC)) and then consideration by the United Nations Administrative Tribunal, which performs judicial functions and delivers binding judgements on the parties (see paras. 42-50 below).

12. Not only employment matters, but also other aspects of the internal affairs of the Organization have been regulated by legislative acts adopted by the General Assembly or administrative issuances promulgated by the Secretary-General. Together with the Staff Regulations and Rules, the Financial Regulations and Rules take a special place within the internal law of the United Nations, as they embody fundamental rules governing the financial administration of the Organization. It is understood that, in respect of the persons, acts or goods governed by the internal law of the Organization, such internal law applies to the exclusion of any national laws.

13. In addition to its intrinsic legislative power concerning internal affairs, the Organization was also given the power to make regulations and adopt rules in order to exercise control over its premises and activities conducted therein. This is, for instance, expressly provided for in article III, section 8, of the Agreement between the United Nations and the United States regarding the Headquarters district, which reads, in its relevant part, as follows:

> "The United Nations shall have the power to make regulations operative within the Headquarters district, for the purpose of establishing therein conditions in all respects necessary for the full execution of its functions. No federal, state or local law or regulation of the United States which is inconsistent with a regulation of the United Nations authorized under this section shall, to the extent of such inconsistency, be applicable within the Headquarters district." 4/

14. The very character of the United Nations as an international Organization, however, imposes limits to the scope of its internal law. For instance, the Organization is not in a position to subject its relations with third parties, such as contractors or suppliers, to its internal law or judicial bodies. Moreover, the United Nations has no criminal jurisdiction under any law or treaty. Matters falling outside the scope of the internal law of the United Nations are thus governed by the laws of the country concerned. For example, article III, section 7 (b) and (c) of the Agreement between the United Nations and the United States regarding the Headquarters district provide:

"(b) Except as otherwise provided in this agreement or in the General Convention, the federal, state and local law of the United States shall apply within the Headquarters district.

"(c) Except as otherwise provided in this agreement or in the General Convention, the federal, state and local courts of the United States shall have jurisdiction over acts done and transactions taking place in the Headquarters district as provided in applicable federal, state and local laws."

It is understood that, notwithstanding the privileges and immunities enjoyed by the Organization and its officials under the General Convention, the criminal laws of the host country concerned apply to acts committed within United Nations premises also in cases where the relevant agreement is silent in this respect.

III. STANDARDS OF CONDUCT

15. Article 101, paragraph 3, of the Charter states:

"The paramount consideration in the employment of the staff and in the determination of the conditions of service shall be the necessity of securing the highest standards of efficiency, competence, and integrity ..."

16. Staff regulations 1.4, 4.2 and 4.4 reiterate the principles set out in Article 101, paragraph 3, of the Charter.

17. The report on standards of conduct in the international civil service, 5/ which was reissued in 1986 after the Administrative Committee on Coordination (ACC) had reaffirmed its belief "that the standards [the report] sets forth continue to be as valuable to staff members today as they have been in the past", 6/ underlines certain basic principles, such as the absolute need for staff members to comply with the requirement of integrity:

"One of the fundamental, if not paramount, standards of conduct derives from the requirement of integrity, underlined in Article 101 of the United Nations Charter ... . Integrity, while perhaps not subject to exhaustive and precise definition, must be judged on the basis of the total behaviour of the person concerned. Such elementary personal or private qualities as honesty, truthfulness, fidelity, probity and freedom from corrupting influences, are clearly included. For the international official, however, the Charter also requires integrity as a public official, and especially as an international public official. Perhaps the clearest expression of this is the fact that he has dedicated himself to regulate his conduct with the interests of the international organization only in view. It follows that he must subordinate his private interests and avoid placing himself in a position where those interests would conflict with the interests of the organization he serves." 7/

18. This all-encompassing approach to the requirement of integrity has allowed the Organization to characterize as misconduct, or serious misconduct, a wide

variety of actions or omissions where a staff member had revealed a lack of honesty, truthfulness or probity which may otherwise have been excluded from the application of more specific and technical definitions. The definition of what constitutes fraud, embezzlement, theft, conversion, misappropriation of funds or property, bribery, kickbacks and other forms of corrupt practices, varies from national law to national law but all of these acts are subsumed under the concept of failure to observe the required standard of integrity.

19. Staff rule 110.1 defines misconduct as:

> "failure by a staff member to comply with his or her obligations under the Charter of the United Nations, the Staff Regulations and Staff Rules or other administrative issuances, or to observe the standards of conduct expected of an international civil servant."

There is no doubt that fraud is a clear violation of the standards of integrity, and that, when properly established, it justifies summary dismissal. 8/

IV. PREVENTION AND DETECTION OF MISCONDUCT

A. Internal controls

20. Financial regulation 10.1 of the Financial Regulations of the United Nations provides:

> "The Secretary-General shall:
>
> (a) Establish detailed financial rules and procedures in order to ensure effective financial administration and the exercise of economy; ...
>
> (d) Maintain an internal financial control which shall provide for an effective current examination and/or review of financial transactions in order to ensure:
>
> (i) The regularity of the receipt, custody and disposal of all funds and other financial resources of the Organization;
>
> (ii) The conformity of obligations and expenditures with the appropriations or other financial provisions voted by the General Assembly; or with the purposes and rules relating to trust funds and special accounts;
>
> (iii) The economic use of the resources of the Organization."

21. The United Nations system of financial control is based, for all financial transactions, on a personal delegation of authority to certifying and alternate certifying officers (under financial rule 110.4), to approving officers (under financial rule 108.9) and to procurement officers (under financial rule 110.16); it is also based on the separation of authority, responsibilities and duties to provide checks and balances. For example, certifying officers cannot

simultaneously exercise the function of approving officers. All financial transactions therefore require clearance from two authorized officers.

22. Since a significant portion of the Organization's resources is devoted to staff costs, particular attention is given to the internal control procedures relating to the benefits and allowances received by United Nations staff members. Internal controls in relation to staff entitlements are intended to ensure conformity with the applicable rules and policies governing the granting of such entitlements and to detect and deter any attempts to circumvent these rules and policies. Internal controls consist essentially of verification or confirmation. Each financial entitlement or benefit requires a different method of verification or confirmation, or combination thereof.

23. Both the Financial Regulations and Rules and the Staff Rules of the United Nations contain explicit provisions to protect the Organization against any financial loss which might result from a staff member's violation of such rules or related administrative instructions. Financial rule 114.1 on personal responsibility states:

> "Every official of the United Nations is responsible to the Secretary-General for the regularity of the actions taken by him or her in the course of his or her official duties. Any official who takes any action contrary to these Financial Rules, or to the administrative instructions issued in connection therewith, may be held personally responsible and financially liable for the consequences of such action".

A parallel provision may be found in staff rule 112.3 on financial responsibility, which reads:

> "Any staff member may be required to reimburse the United Nations either partially or in full for any financial loss suffered by the United Nations as a result of the staff member's negligence or of his or her having violated any regulation, rule, or administrative instruction."

24. Provisions related to personal responsibility are also included in financial rules 109.5 on losses of cash or negotiable instruments, 110.14 on the writing-off of cash and receivables and 110.15 on the writing-off of losses of property.

25. In addition to the provisions on financial responsibility and control in the Financial Rules and the Staff Rules, there is a standing instruction from the United Nations Controller to all executive and administrative officers at Headquarters and all heads of administration and heads of finance at offices away from Headquarters that they are to notify the Controller, directly and in writing, whenever a case of fraud or presumptive fraud involving the improper use of funds is discovered. This instruction applies irrespective of the source of funds. The Director of the Internal Audit Division is to be notified at the same time. The officials responsible for informing the Controller of cases of fraud or presumptive fraud would be held personally responsible if it were determined, in the course of audit reviews or other developments, that cases of fraud or presumptive fraud involving the improper use of funds had been identified but had not been reported to the Controller.

26. In accordance with an instruction dated 8 February 1994, all heads of departments, offices and missions are to send to the Assistant Secretary-General for Inspections and Investigations information on any alleged misconduct, malfeasance, deliberate mismanagement, abuse or violation of United Nations regulations, rules or pertinent administrative issuances that may have occurred within their department, office or mission since the beginning of 1993. The same officials are also requested to report any such acts that may occur in the future in order to enable the Office for Inspections and Investigations to take the necessary action.

27. As outlined above, United Nations staff members, particularly those holding positions of responsibility in administration and finance, are required to report to senior management any inappropriate uses of the resources of the Organization. Furthermore, ample provision exists, both in the Financial Rules and in the Staff Rules, for assigning personal responsibility to individual staff members for any financial loss incurred by the Organization owing to the inappropriate use of resources. Such provisions, coupled with the provisions in the Staff Regulations and Rules and related administrative issuances on disciplinary measures, also serve as a deterrent to the potential misuse of the Organization's resources.

B. Detection

28. Cases of misconduct come to light in a variety of ways. Most often, they are identified in the course of the routine exercise of internal control and monitoring functions, and are reported to the Controller and the Internal Audit Division, as outlined above. In some cases, a staff member other than one who is responsible for the exercise of a particular internal control function may report what he or she believes to be a case of misconduct. In other cases, cases of apparent misconduct may be found in the course of an internal audit. Sometimes, cases of misconduct or fraud by parties external to the United Nations are brought to the Organization's attention by national law enforcement authorities or by individuals seeking to verify the legitimacy of a claim by one or more persons that they are acting as agents of, or are sponsored by, the United Nations.

29. Once an initial report on probable misconduct or presumptive fraud has been received by the Controller, an immediate determination is made whether additional information or evidence is needed. If so, the Office for Inspections and Investigations (of which the Internal Audit Division forms a part), the head of the office concerned or any other appropriate officials are requested to conduct a further investigation of the matter. This preliminary stage may be very brief (a few days) or may take an extended period, depending on the complexity of the case, especially when it is difficult to obtain the necessary evidence.

30. Cases of apparent misconduct of a staff member are reported, with the evidence collected, to the Director of Personnel.

C. External measures

31. At this stage, a determination is also made whether to involve the assistance of law enforcement authorities at the national or international level. If there is sufficient evidence to support the belief that the perpetrator(s) are not staff members or others having a contractual relationship with the United Nations, the matter is normally referred to law enforcement authorities. As the case develops, a judgement is made on the nature and extent of the Organization's involvement in assisting such law enforcement authorities to pursue the case, with due regard to the Organization's privileges and immunities.

32. Where the alleged perpetrator is a staff member, the case would be turned over to law enforcement authorities at this stage only where the misconduct involved is a criminal act under the national laws of the location where the act was committed. In this event, the United Nations would cooperate with the law enforcement authorities to ensure effective prosecution and would waive its privileges and immunities to the extent necessary to achieve this object (see paras. 9, 10 and 14 above).

33. The Secretary-General has on a number of occasions requested that national authorities investigate cases of alleged fraud against the United Nations, particularly by third parties and by former staff with a view to criminal prosecution. However, audit and other investigatory findings that lead to disciplinary measures against staff are not necessarily supported by the almost conclusive evidence needed by national law to secure criminal conviction. Thus, even if a case results in the summary dismissal of a staff member, the evidence will often not be sufficient to satisfy the standard of proof applicable in criminal matters considered by national courts. Moreover, an act that reveals the failure by a staff member to observe the standards of conduct applicable to United Nations staff (see paras. 15-19 above) does not necessarily correspond to the definitions of criminal offences found in national legal systems.

V. INTERNAL DISCIPLINARY MECHANISM

34. Article X of the Staff Regulations and chapter X of the Staff Rules, which came into effect on 1 January 1990, as explained and amplified by administrative instruction ST/AI/371 of 2 August 1991, 9/ contain the principles and rules applicable in disciplinary proceedings.

35. As more fully explained in the note by the Secretariat on internal disciplinary mechanisms (A/AC.243/1994/L.2), all cases are preceded by an initial investigation and fact-finding, during which the staff member suspected of misconduct is informed of the charges and given the opportunity to explain his or her conduct and to submit any justification or exculpatory evidence that may exist. The staff member is also informed of his or her right to be assisted in the preparation of his or her comments and explanations by any other staff member or retired staff member.

36. At the conclusion of this preliminary stage, the Director of Personnel decides whether:

(a) To close the case, when the staff member's conduct does not amount to misconduct or there is insufficient evidence to proceed, or

(b) To refer the case to JDC, if the facts and the evidence indicate that misconduct has occurred, or

(c) To recommend to the Secretary-General that the staff member be summarily dismissed, if the misconduct is serious and the charges are supported by clear and convincing evidence.

37. Summary dismissal is normally imposed when the misconduct is patent, the evidence is clear or overwhelming and the conduct is clearly incompatible with the standards expected of international civil servants. Fraud has consistently been viewed by the Administrative Tribunal - to which a staff member may apply to challenge any disciplinary measure - as serious misconduct justifying summary dismissal.

38. All cases where the misconduct is not deemed to be serious enough to justify summary dismissal, or where the facts are unclear, are to be referred to JDC which may recommend one or more of the following disciplinary measures listed in staff rule 110.3 (a):

(a) Written censure by the Secretary-General;

(b) Loss of one or more steps-in-grade;

(c) Deferment, for a specified period, of eligibility for within-grade increment;

(d) Suspension without pay;

(e) Fine;

(f) Demotion;

(g) Separation from service, with or without notice or compensation in lieu thereof;

(h) Summary dismissal.

39. Once a JDC has been seized of a case, the Director of Personnel in New York, or the designated official at other duty stations, transmits to the staff member the entire dossier submitted to JDC and advises the staff member of his or her right to be represented by any serving or retired staff member at the duty station where the JDC in question has been established. In addition, the staff member is informed of the composition of JDC, and advised of his or her right to submit any written observations to JDC within a specified time, and of his or her right to suggest other persons of whom inquiry might be made and to request that hearings be held and witnesses called.

40. JDC will consider the case after receiving the Administration's presentation, and the comments of the staff member, if any. The proceedings may

be limited to the consideration of written documents, but, in many cases, they involve hearing(s) that the staff member and an official representing the Administration are invited to attend. Witnesses may be heard, which may mean substantial delays when those witnesses are temporarily away on mission or on leave, and when their return occurs at a time when one or more members of JDC are themselves on mission or on leave. The most simple cases usually take several months.

41. In the light of the JDC report, which is only advisory, the Secretary-General decides whether misconduct has occurred and, if so, what disciplinary measure should be applied.

VI. ADMINISTRATIVE TRIBUNAL

42. The United Nations Administrative Tribunal was established by the General Assembly in 1949 by the adoption of its statute, which has since been amended twice. 10/ The right of staff members to appeal to the Administrative Tribunal is specified in staff regulation 11.2, and that of participants in the United Nations Joint Staff Pension Fund (UNJSPF) is specified in article 49 of the UNJSPF Regulations.

43. Unlike JAB and JDC, which are merely advisory to the Secretary-General or to other specified officials, the Administrative Tribunal is a true judicial body, i.e., a court, whose decisions are final and binding on the Secretary-General or on UNJSPB, as well as on the applicant.

44. In respect of staff members, former staff members, successors to their rights or other persons entitled to rights under any contract or appointment, the Administrative Tribunal has general competence, under article 2(1) of its statute, concerning alleged non-observance of their contracts of employment or the terms of their appointment, including all pertinent regulations and rules, including in respect of disciplinary proceedings. Furthermore, in respect of the same persons, the Administrative Tribunal has specific competence, under article 49 of the UNJSPF regulations, concerning alleged non-observance of those regulations by UNJSPB.

45. In principle, applications to the Administrative Tribunal are not receivable before consideration of the matter by JAB or JDC, unless the Secretary-General and the applicant have agreed that the application may be submitted directly to the Administrative Tribunal. 11/ The scope of the proceedings before the Administrative Tribunal is outlined in the following paragraphs.

46. If the Administrative Tribunal finds that a procedure prescribed by the staff regulations or rules has not been observed, it may, on the request of the Secretary-General, remand the case for the institution or correction of the required procedure and may order the payment of up to the equivalent of three months' net base salary as compensation for the delay.

47. If the Administrative Tribunal finds part or all of the application well founded, it may award damages or may order the rescission of the decision

contested or the specific performance of the obligation invoked; at the same time, it also fixes an amount of alternative monetary compensation, which normally is not to exceed two years' net base salary. The Secretary-General must then decide, within 30 days, whether to accept the rescission of the decision or the performance of the obligation or, instead to pay the monetary compensation.

48. The judgements of the Administrative Tribunal are, in principle, final and binding. However, they may, if the Committee on Applications for Review of Administrative Tribunal Judgements so decides, be submitted to the International Court of Justice (ICJ) for an advisory opinion. 12/

49. It is clear from the above that staff members dissatisfied with any administrative decision taken in regard to them, including the decision to carry out a recovery action or to impose a disciplinary measure, have the opportunity to appeal to a judicial body, which will impartially consider such appeals. It should be noted, however, that, among other limitations that the Secretary-General has, on occasion, brought to the attention of the General Assembly, 13/ the Administrative Tribunal is at present not competent to consider claims of the United Nations against its staff members. Consequently, in cases where the amounts recovered from accrued salary and other emoluments are insufficient to compensate the United Nations fully for losses resulting from the misconduct or impropriety, the Organization has no internal means for obtaining a full settlement of the residual indebtedness of the staff member concerned.

50. For this reason, the Secretary-General proposed to the General Assembly, during its forty-eighth session, that, in order to facilitate the task of civil action for recovery of embezzled funds, where this has not been obtained through recovery from salary and emoluments, the statute of the Administrative Tribunal could be amended to give it jurisdiction to judge claims submitted by the Organization against staff members so that proceedings before national courts would be required only for enforcement of the judgement. 14/

VII. RECOVERY

A. Recovery from accrued salary and emoluments

51. Under the provisions of staff rule 103.18 (b) (ii), deductions from salaries, wages and other emoluments may be made for indebtedness to the United Nations. In cases where it is established that United Nations funds were misappropriated by a staff member, action will immediately be taken to recover as much as possible of the amounts involved from any accrued salary and other emoluments, including terminal payments, of the staff member. Virtually all cases of recovery are achieved in this manner.

52. The decision to proceed with recovery is an administrative decision that can be appealed through the internal appeals process. After consideration by JAB, the Secretary-General reviews the decision in the light of the JAB's report and decides whether to maintain it or change it in any way. The staff member or former staff member may then take the case to the Administrative Tribunal (see paras. 42-50 above).

53. In some cases, the amounts recovered have been negligible because the total of the funds misappropriated far exceeded any sums to which the staff member might otherwise have been entitled. Where a staff member had separated from the United Nations and had received all final payments before the presumptive fraud was discovered, it has usually not been possible to recover any part of the misappropriated funds unless the individual was found to be employed by another organization of the United Nations system. In such circumstances, it has sometimes been possible to make arrangements with the other organization to effect recovery on behalf of the United Nations.

B. Pension benefits

54. Attempts by the Administration to obtain direct recovery of indebtedness from the pension entitlements of staff members were rejected in the past by the Administrative Tribunal of the United Nations, which held that the Regulations of UNJSPF, promulgated by the General Assembly, precluded recovery of amounts due to the Organization from the pension benefits of separated staff. The Tribunal held, furthermore, that the Administration could not refuse to issue the documentation on the basis of which a staff member's pension benefits are processed, in an attempt to induce the former staff member to repay to the Organization the sums misappropriated. The Tribunal considered, however, that the Administration should not be left defenceless in such a case; it therefore suggested that the Administration and the Pension Fund should seek an appropriate solution to similar situations.

55. As a result, the Secretary-General amended the administrative instruction on the subject of the personnel payroll clearance action, 15/ to provide for the non-issuance of documents necessary for processing of pension benefits following separation from service. The Secretary-General believes that this procedure may encourage former staff members to settle their indebtedness to the Organization. However, it should be noted that the Tribunal has not yet had an occasion to examine this instruction.

56. In a report to the General Assembly at its forty-eighth session, the Secretary-General described some of the considerations to be taken into account should the General Assembly wish to pursue the possibility of directly attaching pension benefits as a method of recovering monies due from former staff members. 16/

C. Civil actions for recovery

57. In addition to recovery action taken within the United Nations, it may be appropriate to refer a case to the national authorities for further action. If it appears from the investigation that a third party, or a person who is no longer under the jurisdiction of the United Nations, obtained any undue or illegal financial advantage to the detriment of the United Nations, it is possible to institute civil legal proceedings before a national court with a view towards recovering any sums misappropriated from the United Nations or obtaining compensation for damages sustained by it. It should be noted, however, that, while the capacity of the United Nations to institute legal

proceedings before national courts has been fully recognized by the judicial and other authorities of Member States, 17/ this recognition does not entail any special treatment or privilege other than those provided for in the applicable international agreements. Accordingly, the United Nations would have to seek the assistance of outside counsel and the legal proceedings instituted on its behalf would be, inter alia, subject to the national provisions on procedure. In addition to the difficulties that the national courts might find for establishing the alleged impropriety, particularly when it consisted in the violation or circumvention of internal regulations and rules of the United Nations, the amounts that the Organization can reasonably expect to recover are often not commensurate with the cost entailed in such proceedings. 18/

Reference material

58. A list of basic reference material is contained in the annex to the present document. Copies of these materials will be made available to the members of the Working Group.

Notes

1/ See advisory opinion of 11 April 1949 of the International Court of Justice (Reparation for injuries suffered in the service of the United Nations, ICJ Reports 1949, p. 1982).

2/ A comprehensive overview of the practice of the United Nations concerning its status, privileges and immunities is contained in documents A/CN.4/L.118 and Add.1-2 (Yearbook of the International Law Commission, 1967, vol. II, pp. 154-324) and A/CN.4/L.383 and Add.1-3 (Yearbook of the International Law Commission, 1985, vol. II part 1, pp. 145-210).

3/ See General Assembly resolution 22 A (I).

4/ United Nations Treaty Series, vol. II, No. 147. Similar provisions are contained in other headquarters agreements.

5/ Coord/Civil Service/5, 1986 edition.

6/ Preface to the 1986 edition.

7/ Coord/Civil Service/5, 1986 edition, para. 4.

8/ The Administrative Tribunal has consistently upheld the authority of the Secretary-General to impose summary dismissal in cases of fraud or other kinds of serious misconduct. See, for instance, judgements No. 394 Armijo (1987), sect. XII, No. 425 Bruzual (1988), sect. X, No. 479 Caine (1990), sects. XI and XV.

9/ Refers throughout to the "Assistant Secretary-General for Human Resources Management", whose functions are now exercised by the Director of Personnel.

10/ The statute of the Tribunal appears in document AT/11/Rev.4. The same document contains the rules of the Tribunal, which were adopted by the latter and supplement the statute.

11/ The procedure followed for applications before the Administrative Tribunal is provided for in the statute and rules of the Tribunal (AT/11/Rev.4). A detailed outline of such procedures is contained in paras. 44-49 of information circular ST/IC/82/7 of 3 February 1982.

12/ The applicable procedure is provided for in article 11 of the statute of the Administrative Tribunal and is described in paras. 50-56 of information circular ST/IC/82/7.

13/ See, in particular, A/40/471, paras. 15-30.

14/ See A/48/572, paras. 26-33.

15/ ST/AI/155/Rev.2 of 31 August 1990.

16/ See A/48/572, paras. 6-10.

17/ See Yearbook of the International Law Commission, 1967, vol. II, p. 216.

18/ See A/48/572, paras. 12-18.

Annex

LIST OF REFERENCE DOCUMENTS

General Assembly resolution 48/218 of 23 February 1993 on the review of the efficiency of the administrative and financial functioning of the United Nations.

Report on standards of conduct in the international civil service, Coord/Civil Service/5, 1986 edition.

United Nations Administrative Tribunal, Statute and Rules, AT/11/Rev.4.

Report of the Secretary-General on the feasibility of establishing a single administrative tribunal, A/40/471 of 23 July 1985.

Report of the Secretary-General on internal control procedures relating to benefits and allowances, A/42/437 of 5 August 1987.

Measures to facilitate reporting by staff members of inappropriate uses of the resources of the Organization; internal controls relating to the payment of allowances and benefits; and efforts to recover outstanding excess income tax reimbursements, A/47/510 of 8 October 1992.

Report of the Secretary-General on recovery of misappropriated funds from staff members and former staff members, A/48/572 of 9 November 1993.

Administrative instruction on personnel payroll clearance action, ST/AI/155/Rev.2 of 31 August 1990.

Administrative instruction on revised disciplinary measures and procedures, ST/AI/371 of 2 August 1991.

Information circular on internal recourse procedures in the United Nations Secretariat, ST/AI/82/7 of 3 February 1982.

UNITED
NATIONS

A

General Assembly

Distr.
LIMITED

A/AC.243/1994/L.4
14 April 1994

ORIGINAL: ENGLISH

AD HOC INTERGOVERNMENTAL WORKING GROUP
OF EXPERTS ESTABLISHED PURSUANT TO
GENERAL ASSEMBLY RESOLUTION 48/218
First session
11-15 April 1994

DRAFT REPORT OF THE AD HOC INTERGOVERNMENTAL WORKING GROUP OF EXPERTS ESTABLISHED PURSUANT TO GENERAL ASSEMBLY RESOLUTION 48/218 ON THE WORK OF ITS FIRST SESSION

(New York, 11-15 April 1994)

CONTENTS

		Paragraphs	Page
I.	INTRODUCTION	1	2
II.	ORGANIZATIONAL MATTERS	2 - 9	2
	A. Opening of the session	2 - 3	2
	B. Attendance	4	2
	C. Election of officers	5 - 6	2
	D. Adoption of the agenda	7	3
	E. Organization of work	8	3
	F. Documentation	9	3
III.	SUBSTANTIVE MATTERS	10 - 14	3
IV.	ARRANGEMENTS FOR THE SECOND SESSION	15 - 18	4
	A. Issues to be considered	15	4
	B. Documentation	16 - 17	4
	C. Dates of the next session	18	5
V.	ADOPTION OF THE REPORT	19 - 20	5
VI.	CLOSURE OF THE SESSION	21 - 22	5

I. INTRODUCTION

1. The first session of the Ad Hoc Intergovernmental Working Group of Experts established pursuant to General Assembly resolution 48/218 of 23 December 1993 was held at United Nations Headquarters from 11 to 15 April 1994.

II. ORGANIZATIONAL MATTERS

A. Opening of the session

2. The session was opened by the President of the forty-eighth session of the General Assembly. He welcomed all the participants and recalled the circumstances under which the General Assembly had decided to establish the Working Group. He noted that the Assembly had been considering ways and means of improving the efficiency of the Organization, including how to deal with cases of fraud and presumptive fraud. He recalled that, at the forty-eighth session, the question of the adequacy of the judicial mechanism in existence for the Organization to deal with cases of fraud had been raised by the Minister for Foreign Affairs of France. The President recalled that, following discussions in the Fifth Committee, it had been unanimously agreed to establish an ad hoc intergovernmental working group of experts in the legal and financial fields to review the matter, with a view to determining whether a new jurisdictional and procedural mechanism would be warranted, or whether the situation required an extension of the mandates and an improvement of the functioning of existing jurisdictional and procedural mechanisms.

3. The President acknowledged that the task before the Ad Hoc Working Group was a difficult one. However, he was confident that given the vast experience and expertise of the participants they would overcome the difficulties. He wished the Working Group success in its work.

B. Attendance

4. The meeting was attended by experts from 24 Member States. The list of participants is contained in annex I [to be included in the final report].

C. Election of officers

5. At its first meeting, on 11 April, the Working Group elected by acclamation Mr. Mame Balla Sy (Senegal) as its Chairman. The Chairman thanked the Working Group for the confidence placed in him, and observed that the subject before the Working Group was a very important and complex one. He however expressed his confidence that through their joint endeavours they would arrive at a successful conclusion. He was particularly encouraged by the vast expertise of the members of the Working Group.

6. Three Vice-Chairmen, Mr. Pedro Desiderio Blandino Canto (Dominican Republic), Mr. Movses Abelian (Armenia) and Ms. Bonnie Miller (Canada), and a Rapporteur, Mr. N. Sivasubramanian (India), were elected by acclamation.

D. Adoption of the Agenda

7. At its first meeting, on 11 April, the Working Group adopted the following agenda:

1. Election of Officers.

2. Adoption of the agenda and organization of work.

3. Alleged cases of fraud in the United Nations: study of the possibility of the establishment of a new jurisdictional and procedural mechanism or of the extension of the mandates and improvement of the functioning of existing jurisdictional and procedural mechanisms.

4. Adoption of the report of the Ad Hoc Intergovernmental Working Group on its first session.

E. Organization of work

8. The Working Group had before it a conference room paper (A/AC.243/1994/CRP.1) containing a tentative schedule of work. The Working Group accepted that schedule in principle.

F. Documentation

9. The documents presented to the Working Group are listed in annex II [to be included in the final report].

III. SUBSTANTIVE MATTERS

10. Statements were made by members of the Working Group concerning the scope and nature of their mandate. In this connection the Working Group sought clarification from the Secretariat concerning the definition of fraud, its magnitude and the existing stages through which an alleged case of fraud would be submitted.

11. Many members of the Working Group stated that there was a need for additional information in the form of both written and oral reports. Representatives of certain bodies and offices were therefore invited to appear before the Working Group to provide clarification.

12. Members of the Working Group were of the view that external and internal audit should be kept separate as they fulfilled different roles. External audit

is an external oversight mechanism for the control of the United Nations by the General Assembly. It is a basic mechanism needed for the accountability of the Organization to the Assembly.

13. Several members of the Working Group stressed the need to have certain analyses provided, for example the magnitude of fraud cases in terms of both numbers and dollar value, and the ratio of cases strictly considered as emanating from a violation of the Financial Rules, such as the bidding and procurement procedures, to cases involving staff entitlements.

14. The Working Group concluded that those issues would have to be addressed at its second session. The Secretariat was therefore requested to provide relevant information, and where necessary to prepare documents for that purpose.

IV. ARRANGEMENTS FOR THE SECOND SESSION

A. Issues to be considered

15. The Working Group raised a number of issues which it decided to consider in detail at the second session. They included how to treat frauds from both within and outside the United Nations; internal control and disciplinary mechanisms; prevention of fraud; improvement of existing mechanisms and the possibility of establishing new ones; raising awareness and training of staff in the financial areas; and recovery, for example, enabling the Secretary-General to file cases against staff members before the Administrative Tribunal, and the waiver of immunity of staff to allow for prosecution before national courts. Accordingly the Working Group agreed upon the following provisional agenda for the second session:

1. Adoption of the agenda.

2. Magnitude of problems and frauds committed outside and inside the United Nations.

3. Prevention, detection and reporting: review of the adequacy of the existing procedures.

4. Review of the role, relationships and effectiveness of existing bodies.

5. Identification of areas requiring improvement, strengthening, and introduction of new procedures and mechanisms.

6. Recommendations.

B. Documentation

16. Members of the Working Group were encouraged to submit their views in writing to the Secretariat prior to the second session.

17. The Secretariat was requested to prepare analyses of fraud cases, and to make available any existing documents on the subject.

C. Dates for the next session

18. The Working Group agreed to hold its second session at United Nations Headquarters from 13 to 17 June 1994.

V. ADOPTION OF THE REPORT

19. At the 9th meeting, the Rapporteur introduced and orally revised the draft report of the Working Group on the work of its first session (A/AC.243/1994/L.4).

20. The Working Group then adopted the draft report as orally revised.

VI. CLOSURE OF THE SESSION

21. At the 9th meeting, the Chairman summed up the positive achievements of the first session and stressed the usefulness of the work done by the Working Group in determining the scope of its work and identifying the issues which must be addressed and the documentation necessary to enable it to proceed with its work.

22. The Chairman expressed his appreciation to the officers, the Secretariat and all those associated with the work of the session. He thanked all those present for their participation in the first session of the Ad Hoc Intergovernmental Working Group of Experts and declared the session closed.